

LEGISLATIVE RESEARCH COMMISSION

INTEREST RATE REGULATION



**REPORT TO THE
1987 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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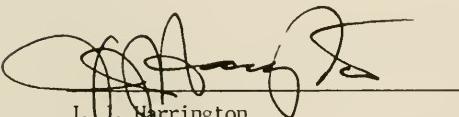


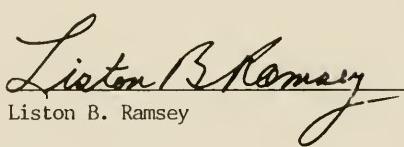
December 5, 1986

TO THE MEMBERS OF THE 1987 GENERAL ASSEMBLY:

The Legislative Research Commission submits to you for your consideration its final report on interest rate regulation in this State. This report was prepared by the Legislative Research Commission's Interest Rate Regulation Study Committee pursuant to Chapter 790 of the 1985 Session Laws.

Respectfully submitted,


J. J. Harrington


Liston B. Ramsey

Cochairmen

Legislative Research Commission

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1985-1986

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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Representative John T. Church	Senator A. D. Guy
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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has ten additional members, five appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly or either house thereof, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

Chapter 790 of the 1985 Session Laws authorizes the Legislative Research Commission to study various topics. The Commission undertook studies of many of the topics listed in that Chapter and grouped those studies into ten broad categories. The Commission assigned each of its members the responsibility for supervising the studies in one of these categories. Committees consisting of members of the General Assembly and the public were appointed by the Commission cochairs pursuant to G.S. 120-30.10 (b) and (c) to make these studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of interest rate regulation is one of the studies authorized by Chapter 790 of the 1985 Session Laws. Section 1, subdivision (14) of that Chapter authorizes the Legislative Research Commission to study interest rate regulation. Because

Chapter 790 is a compilation of many joint resolutions and bills authorizing the Legislative Research Commission to study particular topics. Section 1 of Chapter 790 authorizes the Commission to consider the original bill or resolution proposing a particular study in determining the scope of the study. House Joint Resolution 1227, introduced by Representative Charles D. Evans in the 1985 Session, is the originating legislation for the study of interest rate regulation. That resolution gives the Research Commission's study of interest rate regulation a very broad scope, stating that the "Commission is authorized to study all aspects of interest rate and related fee regulation within this State, with a view toward producing a simplified and coherent state policy in this regard." Chapter 790 and House Joint Resolution 1227 are attached as Appendix A.

The Legislative Research Commission grouped the study of the interest rate regulation in the category "State Regulation" under the direction of Senator A. D. Guy. The Cochairmen of the Interest Rate Regulation Study Committee established by the Research Commission are Senator Joseph E. Johnson and Representative Charles D. Evans. The full membership of the study committee and the staff assigned to the committee are listed in Appendix B of this report. A copy of this report as well as the committee's interim report is filed in the Legislative Library. A committee notebook containing the committee minutes and all information presented to the committee and the subcommittee is also filed in the Legislative Library.

Committee Proceedings

The Legislative Research Commission's Interest Rate Regulation Study Committee met five times. Before holding any meetings, the Cochairmen surveyed interested parties in the State to learn their views on simplifying and clarifying Chapter 24 of the General Statutes, which regulates interest. They then instructed Martha H. Harris, Committee Counsel, to use these suggestions to redraft current Chapter 24 to make it clear and coherent without modifying its substantive content. This draft was circulated among the public before the first meeting.

At the first meeting, the committee adopted the the draft as a working draft and solicited substantive and technical suggestions from all interested parties. At its second meeting the committee considered all the comments it had received and also studied the effects of interest rate deregulation in other states. After the 1986 legislative session, the committee held its third and fourth meetings to decide all of the issues raised by the various parties. It made substantive changes, simplified complex areas of law, and eliminated obsolete provisions. Committee Counsel revised the draft to reflect these changes and reorganized it in response to suggestions from interested parties. Then, at its last meeting, the committee recommended the attached bill, entitled "A BILL TO BE ENTITLED AN ACT TO REPLACE CHAPTER 24 OF THE GENERAL STATUTES WITH A NEW CHAPTER REGULATING INTEREST."

Committee Findings and Recommendations

In studying the regulation of interest rates in Chapter 24 of the General Statutes, the Interest Rate Regulation Study Committee found that the current law is extraordinarily complex and confusing. Chapter 24 is ambiguous in a number of important areas, making it impossible for the parties to a loan to be certain whether they are complying with the law. The bill recommended by the committee reorganizes and simplifies the current law and modernizes its language. The bill also resolves ambiguities in the current law and makes some substantive changes, as discussed in the following findings and recommendations made by the committee.

1. Regulatory structure. The committee found that it would not be advisable to change from the current authoritative regulatory structure which prohibits charging any interest or fee that is not specifically authorized by law. The current approach is clarified and carried forward in S 24A-103 of the proposed new Chapter 24A.

2. Exemption for corporations engaged in commercial, industrial, and manufacturing pursuits. Current law provides that corporations substantially engaged in commercial, manufacturing, or industrial pursuits for pecuniary gain may agree to interest at any rate and may not make a claim of usury. The committee found that this exemption should be modernized and expanded as follows:

- (i) The exemption should apply to all corporations organized for pecuniary gain; and
- (ii) The exemption should also apply to all loans over twenty-five thousand dollars (\$25,000) that are not for a personal, family, or household purpose.

These recommendations are contained in SS 24A-106(a) & (c) of Chapter 24A.

3. Credit cards. The committee found that the interest and fee limitations for credit cards should remain the same. The committee also found that consumers and lenders are harmed by out-of-state lenders who solicit high-interest credit card accounts from North Carolina consumers without disclosing the rates charged on the accounts. In order to address this problem, the committee recommends a provision to require all lenders, both in-state and out-of-state, to disclose their rates when soliciting new credit card accounts in North Carolina. This provision is contained in S 24A-304 of Chapter 24A.

4. Charging interest on deferred interest. The committee found that the current law is ambiguous regarding whether lenders may charge interest on deferred interest in certain situations. The committee decided the law should be clarified as follows:

- (i) Charging interest on deferred interest should be allowed as it is now on home loans of ten thousand dollars (\$10,000) or more;

- (ii) Charging interest on deferred interest should also be allowed on other first mortgage loans of ten thousand dollars (\$10,000) or more;
- (iii) Compounding monthly should be allowed as it is now on open-end credit plans, revolving credit loans, and equity lines of credit;
- (iv) Charging interest on deferred interest should not be allowed on other loans of less than twenty-five thousand dollars (\$25,000) or on loans secured by second or junior mortgages; and
- (v) On all other loans, charging interest on deferred interest should be allowed.

These provisions are contained in SS 24A-202, -303(a), and -404 of Chapter 24A

5. Civil penalties for usury. The committee found that the current statute setting out civil penalties for usury fails to specify a penalty for charging excessive fees. The committee decided to recommend a new subsection dealing with excessive fees and to treat the penalties for excessive fees separately from the penalties for excessive interest. The committee also decided to propose a new affirmative defense to a charge of usury for lenders who have relied in good faith upon governmental authority. These provisions are contained in S 24A-206 of Chapter 24A.

6. Special rules for manufactured home loans. The committee found that current G.S. 24-1.1C, which regulates variable interest

rates on manufactured home loans, should be deleted from Chapter 24 and moved to Chapter 25A where it would apply to sales covered by that Chapter. This change is contained in section 18 of the bill. The committee also found that the definition of "home loan" should be clarified to include home loans secured by manufactured homes attached to real property. The committee recommends that this change be made and that the meaning of "attached to real property" be set out in the statute. This provision is contained in S 24A-108(2) of Chapter 24A.

7. Late fee restrictions. The committee found that the rules regulating late fees in current G.S. 24-10.1 are causing certain inequities. The language of 24-10.1 restricts lenders from charging more than one late fee on a single late payment. This means that if a borrower skips a payment completely and never makes it up, the lender can charge only one penalty, but if a borrower pays late each month, the lender can charge a penalty each month. The committee found that this result was unfair but decided not to recommend legislation changing the current law because it had just been enacted by the General Assembly in 1985. The current law is carried forward in S 24A-404 of Chapter 24A.

8. Consolidation of Article 1 and Article 2 of Chapter 24. The committee found that current law was needlessly complicated by regulating second and junior mortgage loans in two different ways in two separate Articles. The committee recommends consolidating the rules into one system of regulation that is contained in

S 24A-408 of Chapter 24A. The committee also recommends deleting the misdemeanor penalty that currently applies to violations of Article 2 of Chapter 24.

9. Special rules for preferred lenders. Current law provides special rules for certain lenders described in G.S. 24-1.1A. The proposed new Chapter 24A calls these lenders "preferred lenders." The committee found that, as in current law, there are situations in which fewer restrictions should apply to preferred lenders than to other lenders. The committee recommends extending to all preferred lenders the provisions of current G.S. 24-1.4, which allow savings and loan institutions to charge interest and fees on loans to the same extent as if Section 501 of the Depository Institutions Deregulation Act of 1980 were in effect in this State. This recommendation is contained in S 24A-105(b) of Chapter 24A.

Because none of the parties who spoke to the committee about this issue knew the extent of the impact of the federal rules being extended to preferred lenders, the committee requested the Office of the Attorney General to study the federal law and its interpretations by the Federal Home Loan Bank Board and prepare a report clarifying and summarizing the law. The committee instructed the Office of the Attorney General to be ready to present this report to any standing committee of the 1987 General Assembly that may consider the bill.

The committee also found that certain preferred lenders who are not licensed by the State may be making mortgage loans at

unconscionable rates. The committee did not have time to study this issue or prepare legislation but it did recommend that the General Assembly consider requiring the Commissioner of Banks to license those preferred lenders making mortgage loans who are not otherwise licensed by the State.

10. Special rules for construction loans. The committee found that the special rules for construction loans contained in current law apparently serve no purpose other than to complicate the regulatory structure. Therefore, the committee recommends eliminating the special rules for construction loans and allowing constructions loans to be governed by the rules governing other loans. These rules are contained in Article 4 of Chapter 24A.

11. Home loan rules. The committee found that the current law on home loans is unnecessarily complicated because it sets out four different systems of regulation based upon lender status and loan amount. The committee also found that the current rules fail to protect consumers in one particularly vulnerable situation: when they get first mortgage loans on homes they already own. The committee recommends placing interest rate and fee restrictions on these loans and recommends simplifying the rules for other home loans by treating alike all lenders who are not preferred lenders. These provisions appear in SS 24A-402 & -405 of Chapter 24A.

12. Criminal penalty. The committee recommends the repeal of current G.S. 14-391, which imposes a criminal penalty for certain types of usurious loans. This statute has not been construed on the appellate level since 1911. The statute is repealed in section 3 of the bill.

13. Definitions. The committee found that current law could be clarified by adding several new definitions and modifying others. These definitions may be found in SS 24A-108 & -302 of Chapter 24A. Of particular importance was a definition of the term "interest," which is not currently defined in Chapter 24 of the General Statutes. Because some representatives of financial institutions expressed concern about this new definition, the committee noted that the 1987 General Assembly, when considering the recommended legislation, may wish to carefully consider the new definition.

Explanation of Legislative Proposal

The committee recommends one bill, "A BILL TO BE ENTITLED AN ACT TO REPLACE CHAPTER 24 OF THE GENERAL STATUTES WITH A NEW CHAPTER REGULATING INTEREST." Section 1 of the bill recodifies Chapter 24 as new Chapter 24A of the General Statutes. The remaining sections make conforming and related changes to statutes in other chapters.

Chapter 24A is organized into four Articles. The first sets out statutes relating to the scope of the Chapter and areas that are exempt from regulation. Article 2 contains general laws relating to how interest may be computed and establishes civil penalties for usury.

Article 3 contains the maximum interest rates, maximum fees, and other restrictions on "revolving" loans: open-end credit plans, revolving credit loans, and equity lines of credit. Finally, Article 4 sets out the maximum interest rates, maximum fees, and other restrictions on all other loans.

The table following the bill shows where current statutes have been relocated in the recodification. It lists in order the current statutes that are being recodified and shows for each its location in the bill.

Chapter 24A.

INTEREST RATES AND FEES.

Article 1.

Scope of Chapter.

- S 24A-101. Legal rate of interest.
- S 24A-102. Writing required.
- S 24A-103. Regulation of interest and fees.
- S 24A-104. Exemptions.
- S 24A-105. Federal preemption.
- S 24A-106. When usury defense may not be asserted.
- S 24A-107. Transactions governed by Chapter.
- S 24A-108. Definitions.

Article 2.

Computation of interest; penalties.

- S 24A-201. Commissioner's rate.
- S 24A-202. Adjustable interest; compound interest.
- S 24A-203. When interest may be charged and collected.
- S 24A-204. Time from which interest runs.
- S 24A-205. Interest on judgments.
- S 24A-206. Civil penalties for usury.

Article 3.

Revolving credit.

- S 24A-301. Scope.
- S 24A-302. Definitions.
- S 24A-303. Restrictions.

- S 24A-304. Disclosure requirements.
- S 24A-305. Interest and fees on open-end credit plans.
- S 24A-306. Interest and fees on revolving credit loans.
- S 24A-307. Interest and fees on equity lines of credit.

Article 4.

Non-revolving credit.

- S 24A-401. Scope.
- S 24A-402. Deferred interest.
- S 24A-403. Prepayment penalties.
- S 24A-404. Late payment fees.
- S 24A-405. Loans not secured by real property.
- S 24A-406. Home loans.
- S 24A-407. Loans secured by first liens on real property,
other than home loans.
- S 24A-408. Loans secured by second and junior liens on real
property.

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Interest Rate Regulation Study Committee
Public
ST: Interest Rate Recodification.

A BILL TO BE ENTITLED

AN ACT TO REPLACE CHAPTER 24 OF THE GENERAL STATUTES WITH A NEW
CHAPTER REGULATING INTEREST.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding
the following new Chapter:

"Chapter 24A.

INTEREST RATES AND FEES.

"Article 1.

"Scope of Chapter.

"S 24A-101. Legal rate of interest.--The legal rate of
interest is eight percent (8%) per annum.

"S 24A-102. Writing required.--All agreements for the
payment of interest in excess of the legal rate shall be in
writing.

"S 24A-103. Regulation of interest and fees.--(a) Loans
over \$300,000. Where the original principal amount is more than
three hundred thousand dollars (\$300,000), the parties to a loan
may agree to interest and fees in any amount and to any other
terms. The limitations on interest rates, fees, and other terms
provided in this Chapter do not apply to loans of more than three
hundred thousand dollars (\$300,000).

(b) Loans of \$300,000 or Less. Where the original
principal amount of the loan is three hundred thousand dollars

(\$300,000) or less, the lender may not charge any interest, fee, or other charge that is not specifically authorized by statute.

(c) Charges Other Than Interest and Fees. Except as provided in G.S. 24A-408(d), a lender may collect from a borrower, in addition to authorized interest and fees, money for remittance to others in payment of taxes, assessments, cost of upkeep, recording fees, surveys, attorney's fees, appraisals, premiums for fire, title, life, mortgage, and credit insurance, and other related expenses. A lender may also receive:

- (1) The proceeds from an insurance policy where a loss occurs under the terms of the policy;
- (2) Anything of value as security or collateral to secure the repayment of the loan; and
- (3) Anything of value for a fair consideration where the transaction is not a condition of the loan.

"S 24A-104. Exemptions.--(a) The provisions of this Chapter, other than G.S. 24A-101, 24A-204, and 24A-205, do not apply to transactions governed by Chapter 25A of the General Statutes.

(b) The provisions of this Chapter, other than G.S. 24A-101, 24A-204, 24A-205, and 24A-206, do not apply to loans governed by Article 14G of Chapter 54 of the General Statutes.

(c) The loans and investments regulated by G.S. 53-45 are not subject to the provisions of Article 4 of this Chapter regulating home loans.

(d) The interest rate and fee limitations in this Chapter do not apply to investments made by Small Business

Investment Corporations licensed under 15 U.S.C. S 661 et seq., or to the sale or purchase of convertible debentures, other debt securities with accompanying warranties, or other securities sold or purchased through an organized securities exchange.

(e) Notwithstanding any other provision of law, a bank or savings and loan chartered in this State by the State or by the federal government may charge the interest rates authorized for any lender under North Carolina law, other than Article 15 of Chapter 53 or Subchapter III of Chapter 54, subject to the restrictions and limitations that apply to the transaction for which the rate is authorized.

(f) The provisions of Article 3 of this Chapter apply only to open-end credit plans, revolving credit loans, and equity lines of credit. Except as otherwise provided in this Chapter, the provisions of Article 4 of this Chapter apply to all loans other than open-end credit plans, revolving credit loans, and equity lines of credit.

"S 24A-105. Federal preemption.--(a) The provisions of sections 501 and 521-24 of The Depository Institutions Deregulation Act of 1980, Pub. L. No. 96-221, 94 Stat. 142 et seq., shall not apply to loans, mortgages, credit sales, and advances made in this State.

(b) Notwithstanding any other provision of this Chapter, a preferred lender domiciled in this State may charge interest and fees on a loan to the same extent as if the provisions of section 501 of The Depository Institutions Deregulation Act of 1980, 12 U.S.C. S 1735F-7 note, as interpreted

by the Federal Home Loan Bank Board prior to March 31, 1983, were still in effect in this State.

(c) Notwithstanding any other provision of this Chapter, the parties to a loan of twenty-five thousand dollars (\$25,000) or less secured by a first lien on a residential manufactured home may contract in writing for the payment of interest as agreed upon by the parties if the parties would have been entitled to so contract by the provisions of section 501 of The Depository Institutions Deregulation Act of 1980, 12 U.S.C. S 1735F-7 note, and if the parties have complied with the regulations promulgated under that act. As used in this paragraph, the term 'residential manufactured home' means a manufactured home as defined in G.S. 143-145(7) that is used as a dwelling.

"S 24A-106. When usury defense may not be asserted--(a) Corporations. A foreign or domestic corporation organized for pecuniary gain may agree in writing to pay interest and fees in any amount and may not assert a claim or defense of usury with respect to such an agreement.

(b) Public Utilities. A public utility, as defined in G.S. 62-3, may not assert a claim or defense of usury with respect to interest ordered by the North Carolina Utilities Commission on refunds of funds advanced by or overcollected from the utility's customers.

(c) Business Purpose Loans. Where the principal amount of the loan is more than twenty-five thousand dollars (\$25,000) and the loan is a business purpose loan, the parties may agree in

writing to interest and fees in any amount and the borrower may not assert a claim or defense of usury with respect to such an agreement. As used in this subsection, the term 'business purpose loan' means a loan made for a purpose other than a personal, family, or household purpose.

"S 24A-107. Transactions governed by Chapter.--For purposes of this Chapter, a loan shall be deemed to have been made in this State and therefore subject to the provisions of this Chapter if the lender offers or agrees in this State to lend to a borrower who is a resident of this State, if the resident borrower accepts or makes the offer in this State to borrow, or if the security for the loan is located in this State, regardless of the situs of the contract specified in the contract.

A solicitation or communication to lend, oral or written, originating outside of this State, but forwarded to and received in this State by a borrower who is a resident of this State, shall be deemed to be an offer or agreement to lend in this State.

A solicitation or communication to borrow, oral or written, originating within this State, from a borrower who is a resident of this State, but forwarded to, and received by a lender outside of this State, shall be deemed to be an acceptance or offer to borrow in this State.

An oral or written offer, acceptance, solicitation, or communication to lend or borrow, made in this State to, or received in this State from, a borrower who is not a resident of this State shall be subject to the provisions of this Chapter,

applicable federal law, law of the situs of the contract, or law of the residence of the borrower as the parties may elect.

The provisions of this section are severable and if any phrase, clause, sentence, or provision is declared invalid, the validity of the remainder of this section shall not be affected.

It is the public policy of this State to protect residents through the application of the interest laws of this State. Any provision of this section that acts to interfere with the attainment of that public policy is of no effect.

"S 24A-108. Definitions.--The following definitions apply in this Chapter:

(1) 'Commissioner's rate' means the rate of interest announced by the Commissioner of Banks on the fifteenth day of each month as provided in G.S. 24A-201.

(2) 'Home loan' means a loan secured by a first mortgage or first deed of trust on real estate upon which there is or will be located one or more single-family dwellings or dwelling units, which units may include a manufactured home, as defined in G.S. 143-145(7), permanently affixed to the real estate and used as a dwelling. For the purposes of this section, a manufactured home is permanently affixed to the real estate when its wheels and axles are removed, it is placed on a permanent foundation, and there is identity of ownership between the land and the manufactured home. The term 'home loan' does not include a transaction secured by a manufactured home that was not affixed to real property at the time the security interest attached.

(3) 'Home purchase loan' means a home loan to finance the purchase by the borrower of real property which is secured by a first mortgage or first deed of trust on the real property.

(4) 'Interest' means any charge payable directly or indirectly by the borrower and imposed directly or indirectly by the lender as an incident to or a condition of the loan; however, interest does not include fees authorized by this Chapter, charges authorized in G.S. 24A-103(c), or fees and charges otherwise permitted by law.

(5) 'Lender' means a person or entity who makes a loan.

(6) 'Loan' means an agreement to advance money, an agreement to enter into an open-end credit plan, or a forbearance.

(7) 'Original principal amount' means the aggregate of the amount or value disbursed by the lender to or on behalf of the borrower at the time of the loan, plus any additional amount the lender has agreed to lend, plus the sum of all existing indebtedness of the borrower paid on his behalf by the lender at the time of the loan. Where a limited partnership offers or sells its debt obligations, evidenced by one or more written instruments, in a single issue, the original principal amount of the loan is the aggregate amount of the issue.

(8) 'Preferred lender' means a lender who is:

a. Approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans

- Administration, a national mortgage association, or any federal agency;
- b. A bank, savings and loan association, service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union, or insurance company; or
- c. A State or federal agency.

(9) 'Principal balance' means the original principal amount less any amount or value not yet disbursed to or for the benefit of the borrower and less payments of principal made by the borrower.

"Article 2.

"Computation of interest; penalties.

"S 24A-201. Commissioner's rate.--On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the Commissioner's rate which shall be the latest published noncompetitive rate for United States Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%) rounded to the nearest one-half of one percent (1/2 of 1%), or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate published each month shall become effective on the first day of the next month.

"S 24A-202. Adjustable interest; compound interest.--(a) Adjustable Interest. The parties to a loan may agree to a rate of

interest that will vary or be adjusted during the term of the loan. The rate of interest on such a loan may not, in any month during the term of the loan, exceed the maximum rate of interest, if any, applicable to the loan for that month as provided in this Chapter.

(b) Compounding Prohibited. A lender may not compound interest more frequently than annually or charge interest on deferred interest except (1) where interest is authorized at a less than annual periodic rate or (2) as otherwise provided in this Chapter.

"S 24A-203. When interest may be charged and collected.--(a) A lender may not charge interest on loan funds before they are disbursed to or for the benefit of the borrower. Funds disbursed for the benefit of the borrower include funds disbursed to a third party escrow account.

(b) Where a lender charges interest at or below the maximum lawful rate, computes the interest monthly on the principal balance of a loan, and collects interest not more than 31 days in advance of its due date, the interest shall not be deemed in excess of the maximum lawful rate although the total amount of interest paid on the loan may exceed the maximum lawful rate.

"S 24A-204. Time from which interest runs.--Subject to the provisions of G.S. 24A-203(a), a negotiable or nonnegotiable instrument bears interest from the time specified in the instrument; if the instrument does not specify a time from which interest runs, it bears interest as provided in G.S. 25-3-118(d)

and 25-3-122. A liquidated or settled account that is signed by the debtor bears interest from the time it is due, unless the parties have provided in the account that interest will not accrue until a specified time.

"S 24A-205. Interest on judgments.--(a) Contracts. In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. Interest on an award in a contract action shall be at the contract rate, if the parties have so provided in the contract; otherwise, it shall be at the legal rate.

(b) Other Actions. In an action other than contract, the portion of the money judgment designated by the fact finder as compensatory damages bears interest from the date the action is instituted until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate.

(c) Procedure Upon Default in Certain Actions. In an action on a single bond, bill of exchange, note, or signed account, upon entry of a default judgment the clerk shall compute the interest due by law and add it to the principal in the final judgment, which shall provide that the principal amount bears interest until the judgment is satisfied.

"S 24A-206. Civil penalties for usury.--(a) Excessive Interest. A lender who knowingly and with a corrupt intent either

charges or collects interest in excess of the maximum rate set by law, whether before or after the interest accrues, forfeits the entire interest, but not the fees, on the debt. A person or entity who has paid interest in excess of the maximum rate set by law may recover back twice the amount of interest paid.

(b) Excessive Fees. A lender who knowingly and with a corrupt intent either charges or collects a fee not authorized by law forfeits all fees, but not interest, charged on the debt. A person or entity who has paid a fee in excess of the maximum amount authorized by law may recover back twice the amount of the fee paid.

(c) Procedure. A borrower may initiate an action for the civil penalties set out in this section. Where a lender brings an action to recover a debt on which he has charged or collected interest or fees in excess of the maximum rate set by law, the defendant may plead as a counterclaim the civil penalties set out in this section. Where security has been given for a loan on which the lender has charged or collected interest or fees in excess of the maximum rate set by law, a person or entity having an interest in the security may enforce the civil penalties set out in this section and may obtain equitable relief without first tendering the principal plus legal interest.

(d) Affirmative Defense. It is an affirmative defense to a claim of usury under this section that the lender in good faith believed the interest and fees charged were authorized by law and that in so believing the lender reasonably relied upon a clear statement of the law contained in:

- (1) A statute or other legislative enactment;
- (2) An opinion issued in writing by the North Carolina Supreme Court, the North Carolina Court of Appeals, or a federal court; or
- (3) An administrative order, rule, regulation, or interpretation issued in writing by a public body with authority to issue it, other than an informal opinion not intended to be a statement of the law.

A lender may not rely on a statement of law that has been overruled, revoked, or otherwise officially invalidated at the time the lender relied on it.

"Article 3.

"Revolving credit.

"S 24A-301. Scope.--This Article applies only to open-end credit plans, revolving credit loans, and equity lines of credit.

"S 24A-302. Definitions.--The following definitions apply in this Article:

(1) 'Adjusted balance' means the balance at the end of the previous monthly billing cycle less any payments or credits received during the billing cycle.

(2) 'Average daily balance' means a balance based on the total of the daily balances in a billing cycle divided by the number of days in the billing cycle. A daily balance consists of the beginning balance for that day to which the lender may add purchases or advances, and from which the lender shall subtract payments and credits. On the first day of the billing cycle, any

unpaid interest charge from the previous billing cycle may be added to the balance.

(3) 'Billing cycle' means the interval between the issuance of regular periodic statements.

(4) 'Equity line of credit' means a loan, as defined in G.S. 45-81.

(5) 'Open-end credit plan' means an agreement under which extensions of credit for obtaining merchandise or services are made from time to time and interest is computed from time to time on the unpaid balance.

(6) 'Payment due date' means a date, 25 or more days after the billing date selected by the lender, by which the borrower must pay an open-end credit plan account in full in order to avoid interest on the outstanding balance as provided in G.S. 24A-305.

(7) 'Revolving credit loan' means an agreement, other than an equity line of credit, under which the lender advances money directly to the borrower from time to time and interest is computed on the unpaid balance from time to time.

"S 24A-303. Restrictions.--(a) The parties to an open-end credit plan, a revolving credit loan, or an equity line of credit may agree that interest will be compounded at monthly or less frequent intervals.

(b) An annual charge authorized by Article 3 of this Chapter upon an existing credit card account upon which an annual charge has not previously been imposed may not be imposed unless the lender has given the cardholder at least 30 days notice of the

proposed charge, and has advised the cardholder of the right not to accept the new charge. This notice shall be bold and conspicuous and shall be on the face of the periodic billing statement or on a separate statement that is clearly noted on the face of the periodic billing statement provided to the cardholder. If the cardholder does not accept the new charge upon an existing credit card account, the lender may require that the cardholder make no further use of the account beyond the 30-day notice period in order to avoid paying the annual charge, but the cardholder may pay off any remaining balance according to the terms of the credit agreement. Nothing in this subsection shall limit the lender from decreasing any rates or fees to the cardholder. A cardholder who, within 12 months of the initial imposition of an annual charge, rescinds the credit card contract and surrenders all cards issued under the contract to the lender, shall be entitled to a prorated refund of the annual fee previously charged, credited to the cardholder's credit card account.

(c) In an action for the possession of property in which a security interest has been taken pursuant to an open-end credit plan, a judgment for the possession of the property shall be limited to commercial units, as defined in G.S. 25-2-105(6), for which the cash price was one hundred dollars (\$100.00) or more.

(d) A person or entity acquiring the extensions of credit of a provider of merchandise or services pursuant to an open-end credit plan may not charge a discount or fee of more than

six percent (6%) of the principal amount of the extensions of credit.

"S 24A-304. Disclosure requirements.--(a) Applications and Other Communications. This section applies to any application, solicitation of an application, offer of credit, or communication extending credit that is:

- (1) for an open-end credit plan accessed through a credit card or a revolving credit loan accessed through a credit card;
- (2) printed;
- (3) mailed or otherwise delivered to a person at any address within this State;
- (4) not delivered pursuant to an existing credit agreement; and
- (5) not printed in a newspaper, magazine, or periodical generally circulated outside as well as inside the State.

(b) Disclosures. The following disclosures shall be clearly and conspicuously made in or with all documents described in subsection (a) of this section:

- (1) The annual percentage rate or, if the rate may vary, a statement that it may vary, the circumstances under which the rate may increase, any limitations on the increase, and the effects of the increase on the other terms of the agreement.

- (2) The date or occasion upon which the finance charge begins to accrue on a transaction and the duration of any grace period.
- (3) Whether an annual fee is charged and the amount of the fee.
- (4) Whether any other charge or fee may be charged, its amount, and the circumstances under which it may be charged.

(c) Federal Requirements. The form and content of the disclosures described in subsection (b) may be consistent with similar disclosures required by the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. 226. Any amendment to the Act or Regulation that addresses credit card disclosures shall, to the extent it covers applications, solicitations, and other communications covered by this section, replace the disclosure requirements of this section for lenders subject to the Act.

(d) Penalty. A violation of this section shall constitute a violation of G.S. 75-1.1 except that the lender shall not be liable for any fine, civil penalty, treble damages, or attorney's fee where the lender shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(e) Severability. If any part of this section is found unconstitutional or is preempted by federal law with regard to a

lender because the lender is located outside of the State, that part does not apply to lenders located within the State.

"S 24A-305. Interest and fees on open-end credit plans.--(a) Maximum Interest Rate. In extending credit under an open-end credit plan, the lender may not charge any interest if the borrower pays the account in full by the payment due date. If the borrower does not pay the account in full by the payment due date and the plan is not secured by real or personal property, the lender may charge interest at the maximum rate of one and one-half percent (1 1/2%) per month computed on the adjusted balance or on the average daily balance outstanding during the current billing cycle. If the borrower does not pay the account in full by the payment due date and the plan is secured by real or personal property, the lender may charge interest at the maximum rate of one and one-fourth percent (1 1/4%) per month computed on the adjusted balance or on the average daily balance outstanding during the current billing cycle. The periodic statement for the balance of an open-end credit plan shall be mailed to the borrower at least fourteen days before the payment due date. The statement shall specify that the payment due date is the date by which the borrower must pay the open-end account in full in order to avoid the imposition of any interest charge.

(b) Maximum Fees. In extending credit under an open-end credit plan, the lender may charge an annual fee of no more than twenty dollars (\$20.00).

"S 24A-306. Interest and fees on revolving credit loans.--

(a) Maximum Interest Rate. In making a revolving credit loan, a

lender may not charge interest in excess of one and one-half percent (1 1/2%) per month computed on the average daily balance outstanding during the current billing cycle.

(b) Maximum Fees. In making a revolving credit loan the lender may not charge any fees.

"S 24A-307. Interest and fees on equity lines of credit.--

(a) Maximum Interest Rate. The maximum interest rate for an equity line of credit is the Commissioner's rate.

(b) Maximum Fees. A lender may charge only the following fees on an equity line of credit:

(1) Assumption fee. A lender may charge a person or entity who assumes a loan a maximum assumption fee of one hundred seventy-five dollars (\$175.00) if the original obligor is released from liability on the obligation; if the original obligor is not released from liability on the obligation, the maximum assumption fee is one hundred dollars (\$100.00).

(2) Late payment and prepayment fees. A lender may not charge a prepayment penalty or a late payment fee on an equity line of credit.

(3) Other fees. Where the equity line of credit is a home loan, the lender may charge other fees only as provided in G.S. 24A-406(b)(4) & (5). Where the equity line of credit is secured by a first lien on real property, but is not a home loan, the lender may charge other fees totalling no more than one

percent (1%) of the original principal amount of the loan. Where the equity line of credit is secured by a second or junior lien on real property, a preferred lender may charge other fees totalling no more than two percent (2%) of the original principal amount of the loan, and other lenders may charge other fees totalling no more than two percent (2%) of the original principal amount of the loan less the amount of any existing loan by that lender to be refinanced, modified, or extended.

"Article 4.

"Non-revolving credit.

"S 24A-401. Scope.--Except as otherwise provided in this Chapter, this Article applies to all loans other than open-end credit plans, revolving credit loans, and equity lines of credit.

"S 24A-402. Deferred interest.--The parties to any of the loans listed below may agree to deferred payments of interest and to payment of interest on deferred interest. The parties may also agree to periodic payments graduated during parts of or over the entire term of the loan and to periodic disbursements of part of the loan proceeds to be made by the lender over a period of time agreed upon by the parties, which may end with the death of the borrower. In any of these cases, the parties may agree to add deferred interest to principal or otherwise charge interest on deferred interest. This section applies to the following loans:

- (1) A home purchase loan where the original principal amount is ten thousand dollars (\$10,000) or more.
- (2) A home loan, other than a home purchase loan, where the original principal amount is ten thousand dollars (\$10,000) or more and the parties have agreed to an adjustable interest rate.
- (3) A loan, other than a home loan, where the original principal amount is ten thousand dollars (\$10,000) or more and the loan is secured by a first lien on real property.
- (4) A loan made by a preferred lender and secured by a first lien on real property.
- (5) Any loan where the original principal amount is twenty-five thousand dollars (\$25,000) or more.

"S 24A-403. Prepayment penalties.--(a) No prepayment penalty may be charged on the following loans:

- (1) A loan where the original principal amount is twenty-five thousand dollars (\$25,000) or less.
 - (2) A home loan where the original principal amount is one hundred thousand dollars (\$100,000) or less.
 - (3) Any other loan where the original principal amount is one hundred thousand dollars (\$100,000) or less and the borrower prepays more than three years after the first payment on the loan.
- (b) On all other loans where the original principal amount is one hundred thousand dollars (\$100,000) or less, the lender may charge a prepayment penalty not exceeding two percent

(2%) of the principal balance of the loan where the borrower prepays the loan within three years after the first payment on the loan. On all loans where the original principal amount is more than one hundred thousand dollars (\$100,000), the parties may contract for a prepayment penalty in any amount. A borrower who prepays a loan described in this subsection shall give the lender at least thirty days' notice of the prepayment. A lender may not charge a prepayment penalty in accordance with this subsection unless the loan instrument explicitly states the borrower's rights with respect to prepayment.

"S 24A-404. Late payment fees.--(a) A lender may not charge a late payment fee on the following loans:

- (1) A home loan made by a lender who is not a preferred lender where the original principal amount of the loan is ten thousand dollars (\$10,000) or less.
 - (2) A loan secured by a second or junior lien on real property made by a lender who is not a preferred lender.
 - (3) A loan that by its terms calls for repayment of the entire balance in a single payment, rather than in installments of interest or principal and interest.
- (b) On all other loans, a lender may charge a late payment fee only if the parties have agreed in writing to the imposition of the fee and the lender has complied with the provisions of this section.

(c) A lender may not charge a late payment fee that is more than the amount disclosed with particularity to the borrower pursuant to the provisions of the Federal Consumer Credit Protection Act, if the transaction is governed by that Act, or more than four percent (4%) of the amount past due, whichever is less.

(d) A lender may not charge a late payment fee for a payment until it is past due for 15 days or more. If the loan is one on which interest on each installment is paid in advance, the lender may not charge a late payment fee for a payment until it is past due for 30 days or more.

(e) A lender may not charge a late payment fee more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan and the deduction results in a default on a subsequent payment, no late payment fee may be imposed for the default. If a late payment fee has been imposed for a late payment, no late payment fee may be imposed for any subsequent payment that would have been timely and sufficient but for the previous default. A late payment fee for a late payment is waived by the lender unless, within 45 days after the date on which the payment was due, the lender either collects the late payment fee or sends written notice of the late payment fee to the borrower.

"S 24A-405. Loans not secured by real property.--(a)
Maximum Interest Rates. In making a loan that is not secured by real property, a lender may not charge interest in excess of the following maximum rates:

- (1) Where the original principal amount of the loan is more than twenty-five thousand dollars (\$25,000), the parties may agree to interest in any amount.
 - (2) Where the original principal amount of the loan is twenty-five thousand dollars (\$25,000) or less, the maximum interest rate is the Commissioner's rate.
- (b) Maximum Fees. In making a loan that is not secured by real property, a lender may charge only the following fees:

- (1) Prepayment penalty. The lender may charge a prepayment penalty only as provided in G.S. 24A-403.
- (2) Late fee. The lender may charge a late fee only as provided in G.S. 24A-404.

"S 24A-406. Home loans.--(a) Maximum Interest Rates. In making a home loan, a lender may not charge interest in excess of the following maximum rates:

- (1) Where the original principal amount of the loan is ten thousand dollars (\$10,000) or more and the loan is a home purchase loan, the parties may agree to interest in any amount.
 - (2) Where the lender is a preferred lender, the parties may agree to interest in any amount.
 - (3) On all other loans, the maximum interest rate is the Commissioner's rate.
- (b) Maximum Fees. In making a home loan, a lender may charge only the following fees:

- (1) Prepayment penalty. The lender may charge a prepayment penalty only as provided in G.S. 24A-403.
- (2) Late fee. A lender may charge a late fee only as provided in G.S. 24A-404.
- (3) Assumption fee. A lender may charge a person or entity who assumes a loan a maximum assumption fee of one hundred seventy-five dollars (\$175.00) if the original obligor is released from liability on the obligation; if the original obligor is not released from liability on the obligation, the maximum assumption fee is one hundred dollars (\$100.00).
- (4) Other fees on home purchase loans. A preferred lender may charge discount points, commitment fees, finance charges, or other similar charges in any amount agreed upon by the parties. Where the original principal amount of the home purchase loan is ten thousand dollars (\$10,000) or more, other lenders may charge discount points, commitment fees, finance charges, or other similar charges in any amount agreed upon by the parties. Where the principal amount of the home purchase loan is less than ten thousand dollars (\$10,000), other lenders may charge other fees totalling no more than one percent (1%) of the original principal amount of the loan.

(5) Other fees on loans other than home purchase loans.

A preferred lender may charge discount points, commitment fees, finance charges, or other similar charges in any amount agreed upon by the parties. Other lenders may charge on non-home purchase loans other fees totalling no more than two percent (2%) of the original principal amount of the loan less the amount of any existing loan by that lender to be refinanced, modified, or extended.

(c) Prior Law. A home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the loan or commitment to lend was made. A variable rate home loan obligation executed in writing before April 3, 1974, which by its terms provides that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index, shall be enforceable.

"S 24A-407. Loans secured by first liens on real property, other than home loans.--(a) Maximum Interest Rates. In making a loan, other than a home loan, that is secured by a first lien on real property, a lender may not charge interest in excess of the following maximum rates:

(1) Where the original principal amount of the loan is more than twenty-five thousand dollars (\$25,000), the parties may agree to interest in any amount.

(2) Where the original principal amount of the loan is twenty-five thousand dollars (\$25,000) or less, the maximum interest rate is the Commissioner's rate.

(b) Maximum Fees. In making a loan, other than a home loan, that is secured by a first lien on real property, the lender may charge only the following fees:

- (1) Prepayment penalty. The lender may charge a prepayment penalty only as provided in G.S. 24A-403.
- (2) Late fee. A lender may charge a late fee only as provided in G.S. 24A-404.
- (3) Assumption fee. A lender may charge a person or entity who assumes a loan a maximum assumption fee of one hundred seventy-five dollars (\$175.00) if the original obligor is released from liability on the obligation; if the original obligor is not released from liability on the obligation, the maximum assumption fee is one hundred dollars (\$100.00).
- (4) Other fees. A lender may charge other fees totalling no more than one percent (1%) of the original principal amount of the loan.

"S 24A-408. Loans secured by second and junior liens on real property.--(a) Maximum Interest Rates. In making a loan secured by a second or junior lien on real property, a lender may not charge interest in excess of the following maximum rates:

- (1) Where the original principal amount of the loan is more than twenty-five thousand dollars (\$25,000), the parties may agree to interest in any amount.

- (2) Where the original principal amount of the loan is twenty-five thousand dollars (\$25,000) or less, the maximum interest rate is the Commissioner's rate or eighteen percent (18%), whichever is greater.
- (b) Maximum Fees. In making a loan secured by a second or junior lien on real property, a lender may charge only the following fees:
- (1) Prepayment penalty. The lender may charge a prepayment penalty only as provided in G.S. 24A-403.
 - (2) Late fee. The lender may charge a late fee only as provided in G.S. 24A-404.
 - (3) Assumption fee. A lender who is not a preferred lender may not charge an assumption fee on a loan of twenty-five thousand dollars (\$25,000) or less. On all other loans, the lender may charge a person or entity who assumes a loan a maximum assumption fee of one hundred seventy-five dollars (\$175.00) if the original obligor is released from liability on the obligation; if the original obligor is not released from liability on the obligation, the maximum assumption fee is one hundred dollars (\$100.00).
 - (4) Other fees. A preferred lender may charge other fees totalling no more than two percent (2%) of the original principal amount of the loan. Other lenders may charge other fees totalling no more

than two percent (2%) of the original principal amount of the loan less the amount of any existing loan by that lender to be refinanced, modified, or extended.

(c) Term. Where the interest rate charged on a loan secured by a second or junior lien on real property is greater than the Commissioner's rate and the original principal amount of the loan is twenty-five thousand dollars (\$25,000) or less, the loan shall be repayable in no less than six nor more than 181 successive monthly payments which shall be substantially equal in amount. On other loans, the interest may be adjusted as provided in G.S. 24A-202(a).

(d) Other Restrictions. Where the loan is made by a lender who is not a preferred lender and the original principal amount of the loan is twenty-five thousand dollars (\$25,000) or less, the following restrictions apply:

(1) Insurance. A lender may require the borrower to furnish evidence of hazard insurance. The lender may sell optional decreasing term credit life insurance to the borrower in an amount not exceeding the sum of the monthly installments payable under the loan and for a period not exceeding the term of the loan if the following requirements are met:

a. The borrower has indicated a desire to purchase the insurance by signing a statement to that effect;

- b. The borrower has been advised in writing that he may acquire the insurance from any insurance carrier;
 - c. The borrower has been advised in writing that the insurance may be rescinded within 15 days after he receives the policy;
 - d. The borrower directs the lender to purchase the insurance from the proceeds of the loan; and
 - e. The lender furnishes the borrower proof of all insurance issued in connection with the loan within ten days after the date the borrower obtained the loan.
- (2) Permitted charges. A lender may include in the loan only his actual expenses paid to third parties in connection with the loan, for title examination, title insurance, appraisals, surveys, recording or releasing fees to trustees or public officials, and insurance authorized in subsection (d)(1).
- (3) Application fee. A lender may not charge a person applying for a loan an application fee or any other charge if the loan is not consummated.
- (4) Itemized closing statements. A lender shall, at the time of the closing, furnish the borrower, or the grantor in the mortgage, deed of trust, or other security instrument, a complete itemized closing statement showing all disbursements of the loan proceeds and totalling the original principal

amount of the loan. The closing statement shall be signed by the lender and shall contain the following statement printed in a conspicuous manner: 'This loan is one regulated by the provisions of G.S. 24A-408(d) of the General Statutes of North Carolina.' The lender shall retain a copy of the completed closing statement and make it available at all reasonable times to the borrower, his successor, or the agent of the borrower or his successor, until the loan is paid in full. The requirements of this subsection are in addition to the disclosures required by the federal Truth-in-Lending Act.

- (5) Alternate disclosure form. A lender may satisfy the disclosure requirements of subsections (d)(1) and (d)(4) of this section by providing the borrower with a Federal Truth-in-Lending Disclosure Statement that is signed by the lender and contains all of the disclosures required by those subsections."

Sec. 2. Chapter 24 of the General Statutes is repealed and replaced by Chapter 24A as set forth in Section 1.

Sec. 3. G.S. 14-391 is repealed.

Sec. 4. G.S. 25A-11 is amended by rewriting the last sentence to read: "This definition shall not affect the meaning of the term 'open-end credit plan' as defined in G.S. 24A-302(5)."

Sec. 5. G.S. 25A-14(a) is amended by deleting the phrase "revolving credit by G.S. 24-11(a)" and substituting the phrase "open-end credit plans that are not secured by real or personal property by G.S. 24A-305(a)".

Sec. 6. G.S. 25A-14(a) & (c), 25A-17(a) & (b), and 25A-23(d) are amended by deleting the phrase "G.S. 24-11(a)" each time it appears and substituting the phrase "G.S. 24A-305".

Sec. 7. G.S. 45-80(b)(2) is rewritten to read:
"(2) The loan must be a home loan, as defined in G.S. 24A-108(2), where the principal amount is ten thousand dollars (\$10,000) or more, or where the loan is made by a preferred lender, as defined in G.S. 24A-108(8)."

Sec. 8. G.S. 53-43(1) is amended by deleting the phrase ", G.S. 24-1.1 and 24-1.2" and substituting the phrase "and Article 4 of Chapter 24A of the General Statutes".

Sec. 9. G.S. 53-141(2) is amended by deleting the phrase "G.S. 24-1.1 and 24-1.2" and substituting the phrase "Article 4 of Chapter 24A of the General Statutes".

Sec. 10. G.S. 53-166(a) is amended by deleting the phrase "Chapter 24" and substituting the phrase "Chapter 24A".

Sec. 11. G.S. 53-172 is amended in the first and fourth paragraphs by deleting the phrase "G.S. 24-1.1A(e)" each time it appears and substituting the phrase "G.S. 24A-108(2)".

Sec. 12. G.S. 53-180(h) & (i) are amended by deleting the phrase "G.S. 24-1.1A(e)" and substituting the phrase "G.S. 24A-108(2)".

Sec. 13. G.S. 54B-156(a) is amended by deleting the phrase "N.C.G.S. Chapter 24" and substituting the phrase "Chapter 24A of the General Statutes".

Sec. 14. G.S. 54B-156(b) is amended in the second sentence by deleting the phrase "Subject to the provisions of G.S. 24-10(e) and (f), such" and substituting the word "Such".

Sec. 15. G.S. 54B-167 is amended by deleting the phrase "Chapter 24" each time it appears and substituting the phrase "Chapter 24A".

Sec. 16. G.S. 78A-63(i) is amended by deleting the phrase "Chapter 24" and substituting the phrase "Chapter 24A".

Sec. 17. G.S. 116-174.1 is amended in the first sentence by deleting the phrase "Chapter 24" and substituting the phrase "Chapter 24A".

Sec. 18. Chapter 25A of the General Statutes is amended by adding at the end two new sections to read:

"S 25A-46. Adjustable rates for sales of manufactured homes.--(a) A seller of manufactured homes, as defined in G.S. 143-145(7), may make an adjustable or variable rate installment sale of a manufactured home used as a residence subject to the following restrictions:

- (1) Adjustments in the interest rate charged shall be based on changes in a specific index, as set forth in the sale agreement, with the index base being fixed by the value of the index on the first day of the month in which the sale agreement is executed. The index shall be either (i) the monthly average

yield on United States Treasury securities adjusted to a constant maturity of five years; or (ii) an index expressly approved by the Federal Home Loan Bank Board or by the Office of the Comptroller of the Currency, Department of the Treasury, for adjustable or variable interest rates on residential mortgage loans.

- (2) Adjustments to the interest rate may not exceed one-half of one percent ($1/2$ of 1%) per year for any six-month period. If the stated regular interval for rate adjustments is a twelve-month or greater period, rate adjustments may not exceed one percent (1%) per year.
- (3) The rate of interest may not be adjusted during the six-month period beginning with the date of execution of the sale agreement and at least six months shall elapse between each adjustment.
- (4) Adjustments to the rate of interest shall, for the initial adjustment, be equal to the difference between the index value in effect on the first day of the second month preceding the adjustment date and the index value in effect on the first day of the month in which the sale was executed.
Subsequent adjustments shall be equal to the difference between the index value in effect on the first day of the second month preceding the adjustment date and the index value in effect on

the first day of the second month preceding the date of the immediately preceding rate adjustment.

- (5) An increase in the rate of interest permitted by this section is optional with the seller.

Decreases in the rate of interest are mandatory whenever the total decrease in the index value equals or exceeds one-fourth of one percent (1/4 of 1%).

- (6) Any changes in the index that are not reflected in a rate adjustment may, by agreement of the parties, be carried over to subsequent rate adjustment periods and, subject to the provisions of paragraph (5) above, may be implemented to the extent not offset by opposite movement in the index.

- (7) By agreement of the parties, an adjustment to the rate of interest may result in a change in the amount of regular installment payments due under the sale agreement or in the term of the sale agreement, or both.

- (8) A seller may not charge any fees to, or assess any costs against, a buyer in connection with the processing of a rate or term adjustment.

- (9) The seller shall give the buyer written notice of a rate adjustment by first class mail at least one month before the date the new interest rate will take effect. The notice shall include (i) the current and new rates of interest; (ii) the two

index values used to calculate the rate adjustment; and (iii) the amount of any new installment payments and the remaining maturity.

(b) The provisions of G.S. 25A-33(4) and 25A-34 do not apply to sales made under this section.

(c) Notwithstanding any other provision of this Chapter, in a sale made under this section the interest may be computed for any period as the number of days actually elapsed, times the effective annual percentage rate, divided by 365; or monthly as the number of days elapsed based upon an assumption that every month has 30 days, times the effective annual percentage rate, divided by 360. In either case, scheduled monthly payments may assume a 30-day month. Payments may be applied first to accrued interest, then to principal. No default charge shall be assessed on sales under this section.

"S 25A-47. Federal preemption.--The provisions of G.S. 25A-33(4), 25A-34, and 25A-46 do not apply to transactions governed by and made in accordance with section 803 of the Alternative Mortgage Transaction Parity Act of 1982, 12 U.S.C. S 3801 et seq., and the regulations promulgated under that act."

Sec. 19. This act shall become effective July 1, 1988, and applies to loan agreements made on or after that date.

Location of Current Statutes in Bill

G.S. 14-391. Criminal penalty.
Bill: deleted, Sec. 3

G.S. 24-1. Legal rate of interest.
Bill: 24A-101

G.S. 24-1.1. Contract rates.
-definition
Bill: 24A-108(6)

-24-1.1(1)
Bill: 24A-405(a)(2), -407(a)(2), -408(a)(2)

-24-1.1(2)
Bill: 24A-405(a)(1), -407(a)(1), -408(a)(1)

-interest charged 31 days in advance authorized
Bill: 24A-203(b)

-prohibition against charging interest before funds disbursed
Bill: 24A-203(a)

-24-1.1(3)
Bill: 24A-108(1), -201

-authorization of adjustable rates
Bill: 24A-202(a)

G.S. 24-1.1A. Home loans.
-24-1.1A(a)(1)
Bill: 24A-406(a)(1) & (3) (modified)

-24-1.1A(a)(2)
Bill: 24A-108(8) (definition), -406(a)(2) & (3) (rate)

-24-1.1A(a)(3)
Bill: 24A-406(a)(1) & (3) (modified)

-24-1.1A(a)(4)
Bill: 24A-406(a)(1) & (3) (modified)

-24-1.1A(b)
Bill: 24A-403(a)(2)

-24-1.1A(c)
Bill: 24A-406(b)(4) & (5) (modified)

-24-1.1A(d)
Bill: 24A-104(c)

-24-1.1A(e)
Bill: 24A-108(2) (modified)

-24-1.1A(f)
Bill: 24A-406(c)

-24-1.1A(g)
Bill: 24A-202(b), -402(1) & (2) (modified)

-24-1.1A(h)
Bill: 24A-402(1) & (2)

G.S. 24-1.1C. Manufactured home loans.
Bill: Sec. 18 (modified)

G.S. 24-1.2. Installment rates.

-24-1.1(1)
Bill: 24A-403 (prepayment penalty rules), remainder deleted

-24-1.2(2)
Bill: 24A-403 (prepayment penalty rules), remainder deleted

-24-1.2(2a)
Bill: 24A-108(1) (definition), -201 (rate),
-202(a) (adjustable rate)

-24-1.2(5)
Bill: 24A-203(a)

-24-1.2(6)
Bill: 24A-105(c) (exemption), -403 (prepayment penalty rules)

G.S. 24-1.2A. Equity lines of credit.

-definition
Bill: 24A-302(4)

-rate and fees
Bill: 24A-307

-adjustable rates authorized
Bill: 24A-202, -303(a)

G.S. 24-1.4. Interest rates for savings and loan associations.

-24-1.4(a)

Bill: 24A-105(b) (modified)

-24-1.4(b)

Bill: deleted

G.S. 24-2. Penalty for usury.

Bill: 24A-206 (modified)

G.S. 24-2.1. Transactions governed by Chapter.

Bill: 24A-107

G.S. 24-2.2. Interest on certain extensions of credit.

Bill: 24A-104(d)

G.S. 24-2.3. Opt-out from federal preemption.

Bill: 24A-105(a)

G.S. 24-2.4. Prepayment of a loan.

Bill: 24A-403

G.S. 24-3. Time from which interest runs.

Bill: 24A-204

G.S. 24-4. Obligations due guardians.

Bill: deleted

G.S. 24-5. Contracts and judgments to bear interest.

Bill: 24A-205(a) & (b)

G.S. 24-6. Clerk to ascertain interest upon default.

Bill: 24A-205(c)

G.S. 24-7. Interest from verdict to judgment.

Bill: 24A-205(a)

G.S. 24-8. Loans not in excess of \$300,000.

Bill: 24A-103, -104(d)

G.S. 24-9. Loans to corporations organized for profit.

Bill: 24A-106(a) & (c) (modified)

G.S. 24-9.1. Certain repayments to consumers by utilities.

Bill: 24A-106(b)

G.S. 24-9.2. Certain debt obligations by partnerships.

Bill: 24A-106(c), -108(7)

G.S. 24-10. Fees on loans secured by real property.

-24-10(a)

Bill: 24A-103(b) (authoritative structure), -406(b)(4)
(1% allowed, modified), construction loan rule deleted.

-24-10(b) (prepayment provisions)

Bill: 24A-403

-24-10(c) (definition of construction loan)

Bill: deleted

-24-10(d) (assumption fee limitations)

Bill: 24A-307(b)(1), -406(b)(3), -407(b)(3), -408(b)(3)

-24-10(g) (special rules for preferred lenders)

Bill: 24A-408(b)(4)

G.S. 24-10.1. Late fees.

Bill: 24A-307(b)(2), -404

G.S. 24-11. Revolving credit charges.

-24-11(a)

Bill: 24A-302(5) (definition), -302(6) & -305(a) (grace period),
-305(a) (interest rate), -305(b) (annual fee), -303(d) (6% on
acquired accounts)

-24-11(b)

Bill: 24A-302(7) (definition), -306(a) (rate)

-24-11(c)

Bill: 24A-305(a) (accounts secured by property),
-303(c) (action for possession of property)

-24-11(d)

Bill: 24A-305(a) (last two sentences)

-24-11(e)

Bill: 24A-303(b)

G.S. 24-12. Applicability of Article 2.

Bill: 24A-408(c) & (d)

G.S. 24-13. Principal amount defined.

Bill: 24A-108(7) (modified)

G.S. 24-14. Limitations on charges and interest.

-24-14(a)

Bill: 24A-408(a) (interest rate, modified),
-202(b) & 402 (compounding prohibited)

-24-14(b)

Bill: 24A-408(d)(2) (permitted charges)

-24-14(c)

Bill: 24A-408(d)(1) & (5) (insurance charges, modified)

-24-14(d)

Bill: 24A-408(d)(3) (application fee prohibited)

-24-14(e)

Bill: 24A-403(1) (prepayment penalty prohibited)

-24-14(f)

Bill: 24A-408(b)(4) (fees)

G.S. 24-16. Itemized closing statements.

Bill: 24A-408(d)(4) & (5) (modified)

G.S. 24-16.1. Exemptions.

Bill: 24A-408(d) (modified)

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985
RATIFIED BILL

CHAPTER 790
SENATE BILL 636

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) Continuation of the Study of Revenue Laws (H.J.B. 17-Lilley),
- (2) Continuation of the Study of Water Pollution Control (H.J.B. 141-Evans),
- (3) Adolescent Sexuality Teaching (H.J.B. 275-Jeralds),
- (4) Continuation of the Study on the Problems of the Aging (H.J.B. 322-Greenwood),
- (5) Continuation of the Study of Municipal Incorporations (H.J.B. 389-Greenwood),
- (6) School Discipline (H.J.B. 861-Colton),
- (7) Bail Bondsmen and Bail Bond Forfeiture (H.B. 967-Watkins),
- (8) Preventative Medicine (H.B. 1052-Locks),
- (9) Life Care Arrangements (H.B. 1053-Locks),
- (10) State Personnel System (H.B. 1064-Wiser),
- (11) Long-Term Health Care Insurance (H.B. 1103-Locks),
- (12) Itinerant Merchants (H.B. 1170-Lancaster),
- (13) Manufactured Housing Zoning (H.B. 1178-Ballance; S.B. 636-Plyler),
- (14) Interest Rate Regulation (H.J.B. 1227-Evans),
- (15) Underground Storage Tank Leakage Hazards and other ground water hazards (H.B. 1281-Locks),
- (16) Mental Patient Commitments (H.J.B. 1313-Miller),
- (17) High-Level Radioactive Waste Disposal (H.B. 1373-Diamond; S.B. 655-Hipps),
- (18) Stun Guns (H.J.B. 1390-McDowell),
- (19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H.J.B. 1393-Hackney),
- (20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H.J.B. 1405-Holroyd),
- (21) Superintendent of Public Instruction and State Board of Education (H.J.B. 1412-Nye),
- (22) Rental Referral Agencies (H.B. 1421-Stamey),
- (23) Child Abuse Testimony Study (S.B. 165-Hipps),
- (24) Home Schooling Programs (S.J.B. 224-Winner),
- (25) Pretrial Release (S.J.B. 297-Winner),

- (26) Inmate Substance Abuse Therapy Program (S.J.R. 317-Plyler),
(27) Inmate Work-Release Centers (S.B. 406-Swain),
(28) Community College System (S.B. 425-Martin),
(29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),
(30) State Employee Salaries and Benefits (S.B. 514-Jordan),
(31) State Infrastructure Needs (S.B. 541-Royall),
(32) Commercial Laboratory Water Testing (S.B. 573-Taft),
(33) Outdoor Advertising (S.B. 611-Thomas, R.P.),
(34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison),
(35) Continuation of the Study of Child Support (S.B. 638-Marvin),
(36) Local Government Financing (S.B. 670-Rauch),
(37) Medical Malpractice and Liability (S.B. 703-Taft),
(38) Marketing of Perishable Food (S.B. 718-Basnicht),
(39) Child Protection (S.B. 802-Hipps),
(40) Legislative Ethics and Lobbying (S.B. 829-Rauch),
(41) Satellite Courts (S.B. 850-Barnes),
(42) Substantive Legislation in Appropriations Bills (S.B. 851-Band),
(43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b)(6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee.

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read:

"(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

ROBERT B. JORDAN III

Robert E. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

HOUSE JOINT RESOLUTION 1227
Second Edition Engrossed 5/30/85

Sponsors: Representatives Evans; Allran, Ballance, Blue,*

Referred to: Rules and Operation of The House

May 17, 1985

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY INTEREST RATE REGULATION IN NORTH CAROLINA.

3 Whereas, the laws and administrative rules regulating
4 the charging of interest, fees and discounts in connection with
5 the making of loans have a profound effect upon the economic
6 climate and thus the citizens of any jurisdiction; and

7 Whereas, the interest rate laws and related charges are
8 spread throughout the North Carolina General Statutes including
9 Chapter 24 - Interest; Chapter 25A - the Retail Installment Sales
10 Act; and Article 15, the North Carolina Consumer Finance Act, of
11 Chapter 53 - Banks; and

12 Whereas, the U.S. Congress has regulated interest rates
13 charged by federally chartered institutions operating within this
14 State; and

15 Whereas, the multitude and complexity of interest rate
16 laws are confusing to many people including those knowledgeable
17 in lending; and

18 Whereas, there has not been in recent memory a
19 systematic review by the General Assembly of all the laws
20 regulating interest and related charges on loans;

1 Now, therefore, be it resolved by the House of Representatives,
2 the Senate concurring:

3 Section 1. The Legislative Research Commission is
4 authorized to study all aspects of interest rate and related fee
5 regulation within this State, with a view toward producing a
6 simplified and coherent State policy in this regard. The
7 Legislative Research Commission may report its findings and
8 recommendations [H-10 THE 1988 GENERAL ASSEMBLY 1988 REGULAR
9 SESSION] to the 1987 General Assembly.

10 Sec. 2. This resolution is effective upon ratification.

11 _____

12 *Additional Sponsors: Brubaker, Chapin, Clark, Colton, Cromer,
13 Dawkins, Fitch, Hackney, A. Hall, Hasty, Hege, Lancaster,
14 Mavretic, Miller, Nesbitt, Payne, Pulley, Sizemore, Watkins,
15 Wright.

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APPENDIX B

Subject: Interest rate regulation
Auth: Chapter 790 § 1 (14) (SB 636-Sen. Plyler, et al), HJR
1227 (Rep. Evans, et al)

Members

<u>President Pro Tem's Appointments</u>	<u>Speaker's Appointments</u>
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Sen. Wilma C. Woodard Post Office Box 189 Garner, NC 27529 (919) 772-2339	Mr. Gerald W. Witherspoon 125 N. Lafayette Street Shelby, NC 28150
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